

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO.1208 OF 2020

Yogesh Shalik Shrirame
Aged about 31 years,
Occupation – Service ‘Gram Sewak’ on contract,
R/o. Village Wadhona (Khurd),
Post-Parva, Tahsil-Ghatanji,
District Yavatmal
Wadhona-445 306

...PETITIONER

VERSUS

1. The Scheduled Tribe Certificate
Scrutiny Committee, Amravati
through its Member Secretary,
Deshmukh Building, Irvin Chawk,
Morshi Road, Amravati – 444 601
2. The Scheduled Tribe Certificate
Scrutiny Committee, Amravati
through its Chairman and
Commissioner/Director,
Tribal Research & Training Institute,
28, Queens Garden,
Pune, Maharashtra – 411 001
3. State of Maharashtra,
through its Principal Secretary,
Tribal Development Department,
Mantralay Extension, Madam Kama Road,
Mumbai – 400 032
4. Chief Executive Officer,
Zilla Parishad Yavatmal,
through Block Development Officer,
Panchayat Samiti Ghatanji,
District Yavatmal,
Ghatanji – 445 301

...RESPONDENTS

Shri S.P. Khare, Advocate for the petitioner.
Mrs. S.S. Jachak, A.G.P. for respondent Nos.1 to 3/State.

CORAM : **A.S. CHANDURKAR AND**
URMILA JOSHI-PHALKE, JJ.
DATE : **AUGUST 24, 2022.**

JUDGMENT (Per Urmila Joshi-Phalke, J.)

Heard learned counsel for the parties.

2. **RULE.** Rule made returnable forthwith.

3. The petitioner's claimed to be 'Mana' Scheduled Tribe who is working as a Gram Sewak. On 14/12/2007, he submitted proposal for getting Scheduled Tribe Validity Certificate. Accordingly, his claim was referred to the Vigilance Committee for the report. The Vigilance Committee conducted an inquiry and submitted report on 01/01/2009. Thereafter on 26/11/2014, show cause notice was served upon the petitioner. The petitioner had submitted its reply on 19/12/2014 in pursuance to the said notice. On 19/06/2017, respondents asked the petitioner to file new Caste Certificate in proper format. Accordingly, on 10/07/2017, the petitioner had submitted the Caste Certificate as per the requirement.

4. It is the contention of the petitioner that the deemed date for the regularization of his service was 27/03/2018. But the said benefit was not given to him for want of validity. He had also filed Writ Petition No.6380/2018 in which direction was given to the respondents to decide the claim of the petitioner at the earliest. After direction of this Court second Vigilance was conducted on 25/07/2019 and notice was issued to the petitioner calling his explanation regarding the Vigilance Report. On 05/08/2019, he submitted his detailed reply, however, respondents had not considered the reply and the old documents submitted by him and on 24/02/2020 Committee invalidated the claim of the petitioner. As per the contention of the petitioner, he had submitted documents which were pre-constitutional entries of the year 1936 and 1944 but the Committee had ignored the same. He also submitted family tree which shows that one Kisna was his great grandfather who had one son by name Kawadya. Said Kawadya is his grandfather who had one son and two daughters namely Namdeo, Janabai and Sonabai. Said Namdeo had one son namely Shalik who is the father of the petitioner. Thus, the petitioner has already submitted the family tree against whom continuously entry of 'Mana' is recorded. He further submitted that the birth extract of Kawadya i.e. his grandfather shows that he belongs to 'Mana'. Said document is also

collected by Vigilance. However, respondent-Committee had not considered the same and also ignored that the petitioner had submitted the pre-constitutional documents which had probative value and erroneously invalidated the claim of the petitioner.

5. On the other hand, it is submitted on behalf of the Committee by filing reply that the Scrutiny Committee was justified in refusing to grant Validity Certificate. The petitioner failed to prove the affinity as well as there were adverse entries, therefore, the order passed by the Caste Scrutiny Committee is correct one and the writ petition deserves to be dismissed.

6. Heard Shri S.P. Khare, learned Counsel for the petitioner. He submitted that the Committee had not only ignored pre-constitutional documents which had probative value but not considered that the petitioner had also proved the affinity test. The documents which are on record shows that grandfather of the petitioner namely Kawadya was recorded as 'Mana'. The Vigilance Report dated 14/11/2008 and Second Vigilance Report dated 20/07/2019 also shows that great grandfather of the petitioner was recorded as 'Mana'. He further submitted that not only the documents of the petitioner but the Committee had also ignored the law laid down by this Court as well as by the Hon'ble Apex Court

which held that the pre-constitutional documents had probative value. In support of his contention, he placed reliance on *Gitesh s/o. Narendra Ghormare vs. Scheduled Tribe Certificate Scrutiny Committee Nagpur and others 2018(4) Mh.L.J. 933*.

7. As against this, Mrs. S.S. Jachak, learned Assistant Government Pleader submitted that the Scrutiny Committee was justified in refusing to grant any validity certificate and, therefore, no interference is called for.

8. After hearing both the parties at length and after perusing the record maintained by the Scrutiny Committee, apparently shows that twice the Vigilance Committee has conducted the inquiry initially in the year 2008 and thereafter in the year 2019. The original record produced for the perusal shows that the Vigilance Report dated 14/11/2008 shows that great grandfather of the petitioner namely Kawadya, Kisna was recorded as 'Mana'. Said entry is dated 22/12/1944. Second Vigilance Report dated 25/07/2019 also shows that great grandfather of the petitioner namely Kawadya was recorded as 'Mana'. The Scrutiny Committee invalidated the claim only on the ground that there was one adverse entry in the year 1936 i.e. dated 11/09/1936 which is a birth entry of the daughter of Kawadya namely Sumitra which was recorded

as 'Mana Kunbi' but there are subsequent entries including entry dated 22/12/1944 which shows that the second daughter namely Soni was recorded and at that time caste of the Kawadya i.e. great grandfather of the petitioner was recorded as 'Mana'. Admittedly, there is no dispute about the family tree, Kisna is the great grandfather of the petitioner who had one son namely Kawadya. Kawadya has one son and two daughters namely Namdeo, Janabai and Sonabai. Admittedly, one daughter born to Kawadya in the year 1936 was not mentioned in the family tree but there is a birth entry of second daughter namely Soni which was taken in a birth register on 22/12/1944. At the time of taking said birth entry great grandfather of the petitioner was recorded as 'Mana'. Said birth entry of 1944 is not only submitted by the petitioner but it was also collected by the Vigilance Committee while conducting the Vigilance Report. Committee has not explained why the said entry was disbelieved by them. Thus, pre-independence entry in the name of great grandfather shows that he was recorded as 'Mana'.

9. The Caste Scrutiny Committee came to the conclusion that the petitioner could not prove affinity. The family tree is produced on record and it was not disbelieved by the Committee. It is held by the Committee, the petitioner ought to have proved the customs, affinity and traditions of the 'Mana' tribe community. It is also observed by the

Committee that the document of 1944 was collected during the Vigilance Inquiry. The findings recorded by the Caste Scrutiny Committee are based on the ground that there was one adverse entry of 11/09/1936 showing 'Mana Kunbi'.

10. In the present case, it is not the contention of the Committee that family tree is incorrect. The pre-independence documents on record sufficiently shows that great grandfather of the petitioner was recorded as 'Mana'. In the case of *Ku. Nayan d/o. Bhaskar Chouke vs. The Scheduled Tribes Caste Scrutiny Committee, Nagpur* in a *Writ Petition No.491/2019* wherein this Court has considered the directions given by the Hon'ble Apex Court in Civil Application No.5270/2004, wherein it is observed by the Hon'ble Apex Court that there was no reason for the Scrutiny Committee to have embark upon further inquiry into the matter and questioned the validity of the claim, only on the ground that some of the relatives caste entries in pre-constitutional documents were such as 'Mani', 'Manya', 'Mana' and 'Mana Kunbi'. Even the reasons stated by the Scrutiny Committee for rejecting the validity granted to father and real brother of the petitioner is untenable. In another judgment of *Gitesh* (supra) also this Court had held that if there are number of documents containing different kinds of entries of caste/tribe like 'Mana', 'Mane', 'Mani', 'Mana Kunbi', 'Kshatriya

Mana', 'Khand Mana', 'Maratha Mana' and so on, the duty of the Court will be to ascertain the dominant entries having greater probative value and record a specific finding of conclusive nature as to whether entries can be construed as 'Mana Scheduled Tribe', which is an entry in the cluster of tribes at Serial No.18 in the Constitution (Scheduled Tribes) Order. Merely because certain documents indicate entry of caste/tribe other than 'Mana' is not enough to reject the claim. What is prohibited is that the entry 'Mana' in Scheduled Tribes Order does not include or exclude the entries like 'Mana Kunbi', 'Kshatriya Mana', 'Khand Mana', 'Maratha Mana', 'Kunbi Mana' and so on, which are probably known to exist as separate caste/tribe or sub-caste/tribe. The interpretation, clarification, explanation of the entries in the Scheduled Tribes Order is not permitted. The interpretation of entries in the documents cannot be confused with the interpretation entry in the Scheduled Tribes Order.

11. In the present case, it is not the contention of the Committee that there are continuous adverse entries regarding the caste/tribe of the Predecessors of the petitioner during pre-independence era. Caste Scrutiny Committee relied only single entry of 1936 and invalidated the claim. There is no reason to accept the contention of the Scrutiny Committee that the petitioner failed to prove that he belongs to 'Mana' tribe. The pre-independence entry which had a probative value

and that single entry is sufficient to prove that forefathers of the petitioner belongs to 'Mana' tribe. That single entry is sufficient to prove conclusive evidence for recording a finding regarding the caste claim of the petitioner. In fact, a single entry which is of pre-independence era shows that Predecessors of the petitioner was 'Mana'.

12. In the light of the above discussion, we find that the finding of the Committee is erroneous and liable to be set aside. Hence, we proceed to pass following order :

O R D E R

- (i) The Writ Petition is allowed.
- (ii) The order passed by the Scheduled Tribe Caste Scrutiny Committee, Amravati dated 24/02/2020 invalidating tribe claim is set aside.
- (iii) It is declared that the petitioner has proved that he belongs to 'Mana' Scheduled Tribe.
- (iv) The Scrutiny Committee within a period of six weeks on receipt of copy of this judgment shall issue validity certificate to the petitioner.
- (v) The respondent No.4 as employer shall extend all benefits to the petitioner sanctioned upon the aforesaid petitioner which he is entitled to.

(vi) The record obtained by the learned Assistant Government Pleader from the Scrutiny Committee is returned back to her.

13. Rule is made absolute in the aforesaid terms. There will be no order as to costs.

(URMILA JOSHI-PHALKE, J.)

(A.S. CHANDURKAR, J.)

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